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VÁSTAGO PRODUCCIONES, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VÁSTAGO PRODUCCIONES, LLC,)	Case No.: 5:24-mc-80047
)	
Movant,)	VÁSTAGO PRODUCCIONES, LLC'S MOTION
)	TO COMPEL GOOGLE LLC'S COMPLIANCE
v.)	WITH SUBPOENA TO PRODUCE DOCUMENTS,
)	INFORMATION, OR OBJECTS
GOOGLE LLC,)	
)	
Third Party.)	
)	
VÁSTAGO PRODUCCIONES, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	
HEAVEN PUBLISHING LLC and MICHAEL)	
RODRIGUEZ,)	
)	
Defendants.)	
)	

I. INTRODUCTION

On November 9, 2023, Vástago Producciones, LLC (“**Vástago**”) served a subpoena duces tecum on Google LLC (“**Google**”) in connection with a lawsuit pending in the United States District Court for the Southern District of Texas styled *Vástago Producciones, LLC v. Heaven Publishing LLC, et al.*; Case No. 4:23-cv-01432 (the “**Texas Action**”). The subpoena set a deadline of December 4, 2023 and designated Sacramento, California as the place of production. Despite the response deadline having passed more than 2 months ago, and notwithstanding Vástago’s multiple efforts to obtain Google’s compliance without the necessity of Court intervention, Google has altogether failed and refused to comply with the subpoena without justification.

Accordingly, Vástago has been forced to bring this action to enforce the subpoena.

II. FACTUAL BACKGROND

On July 18, 2023, Plaintiff/Counter-Defendant Vástago filed its first amended complaint (“**First Amended Complaint**”) in the Texas Action wherein Vástago asserted claims against Defendants/Counterclaimants Heaven Publishing (“**Heaven Publishing**”) and Michael Rodriguez (“**Rodriguez**”) (collectively, “**Defendants**”) in connection with a case or controversy between the parties with respect to the authorship and ownership of 75 musical works (the “**Subject Musical Works**”). *See* Declaration of Michael A. Trauben (“**Trauben Decl.**”) at ¶¶2-7, Ex. “A”.

Within the First Amended Complaint, Vástago alleges that Vástago is the exclusive author and owner of the Subject Musical Works and that, notwithstanding Vástago’s exclusive authorship and ownership of the Subject Musical Works, based upon Defendant Rodriguez having made various limited contributions to the Subject Musical Works while working as an employee of Plaintiff Vástago, Rodriguez has recently started to claim to be a co-author and co-owner of the Subject Musical Works. (*Id.* at ¶3).

Vástago further alleges in the First Amended Complaint that, drawing upon this newfound contention that he is a co-author and co-owner of the Subject Musical Works, Rodriguez has purported to enter into an “exclusive administration agreement” with Defendant Heaven Publishing, whereby Heaven Publishing is now claiming to exclusively control and administer Rodriguez’s purported ownership interest in the Subject Musical Works. (*Id.* at ¶4).

1 In turn, Defendants Heaven Publishing and Rodriguez have asserted counterclaims in the Texas
 2 Action alleging that Rodriguez was the co-composer of each of the Subject Musical Works, alleging
 3 that, in co-composing these works, Rodriguez was not acting within the course and scope of his
 4 employment by Vástago but instead was an independent contractor. (*Id.* at ¶5).

5 Upon information and belief, based upon the copyright ownership dispute between the parties,
 6 and despite the continued exploitation of the Musical Works and Sound Recordings on YouTube, for the
 7 past several years, YouTube has placed a hold on the distribution of any revenues, income, royalties
 8 and/or other monies derived from the exploitation of the Musical Works and Sound Recordings. In
 9 addition, YouTube has failed and/or refused to advise and/or disclose to the parties in the Texas Action
 10 how much revenue, income, and/or royalties YouTube is holding in connection with the exploitation and
 11 monetization of the Musical Works and Sound Recordings.

12 Accordingly, on or around November 9, 2023, Vástago issued a subpoena duces tecum in the
 13 Texas Action to Google requesting, among other discrete categories of documents directly relevant to its
 14 affirmative claims in the Texas Action, documents reflecting the “royalties and/or other monies
 15 currently being held” by Google “in connection with the Musical Works” and “in connection with the
 16 Sound Recordings” (the “**Subpoena**”). (Trauben Decl. at ¶8, Ex. “B”).

17 On November 9, 2023, Vástago caused the Subpoena to be personally served upon Google’s
 18 registered agent. (*Id.* at ¶9, Ex. “B”).

19 On November 27, 2023, Google served boilerplate objections to the Subpoena via email, stating
 20 in conclusory fashion that “Google will not produce documents in response to the Subpoena because the
 21 requests are objectionable” (the “**Google Objection**”). (*Id.* at ¶10, Ex. “C”).

22 Concurrent with Google’s service of the Google Objection, Google sent an email suggesting a
 23 meet and confer teleconference to discuss the Subpoena. (*Id.* at ¶11, Ex. “D”). On the same day, counsel
 24 for Vástago responded and proposed multiple times of availability for such a meet and confer
 25 teleconference. (*Id.* at ¶12, Ex. “D”).

26 On November 18, 2023, Google wrote counsel for Vástago to confirm a date and time to conduct
 27 the meet and confer teleconference, specifically “11:30am PST on Friday, December 1” and further
 28 provided “dial-in information to connect.” (*Id.* at ¶13, Ex. “D”). On Friday, December 1, 2023 at 11:30

1 a.m. PST, counsel for Vastago called the dial-in number to join the confirmed meet and confer
 2 teleconference with Google. (*Id.* at ¶14). However, no representative from Google joined the meet and
 3 confer teleconference. (*Id.*).

4 At 11:36 a.m., while remaining on the conference line Google had provided, counsel for Vástago
 5 sent an email to Google to advise that no representative from Google had joined the teleconference. (*Id.*
 6 at ¶15, Ex. “D”). At or around 11:46 a.m., counsel for Vástago was unilaterally disconnected from the
 7 conference line. (*Id.* at ¶16). Immediately thereafter, counsel for Vástago emailed Google again to
 8 advise Google of the conference line disconnect and of Google’s failure to participate in the meet and
 9 confer teleconference. (*Id.*).

10 On December 10, 2023, Vástago followed-up with Google to both (i) confirm Google’s failure to
 11 attend the confirmed teleconference; and (ii) request Google’s compliance with the Subpoena. (*Id.* at
 12 ¶17, Ex. “E”). Google did not respond to this December 10, 2023 email in any respect or capacity. (*Id.* at
 13 ¶18).

14 Thereafter, on January 8, 2024, Vástago again followed-up to advise Google that Vástago would
 15 be preparing a motion to compel Google’s compliance with the Subpoena. (*Id.* at ¶19, Ex. “D”). Once
 16 again, however, Google did not respond. (*Id.* at ¶20).

17 Accordingly, although Vástago attempted, multiple times, to meet and confer with Google to
 18 obtain a response to the Subpoena without Court intervention, based upon Google’s wholesale failure
 19 and refusal to produce any documents in response to the Subpoena, Vástago has been forced to initiate
 20 this action and file this motion.

21 **III. ARGUMENT**

22 Federal Rule of Civil Procedure 37 provides for the Court to compel a non-party subpoena
 23 recipient to disclose relevant documents that it has withheld and order the subpoenaed party to pay the
 24 movant’s reasonable expenses incurred in making a motion to compel, including attorney’s fees. As
 25 detailed above, the information sought in the Subpoena is within Google’s possession, custody, or
 26 control and is highly relevant to the affirmative claims and defenses asserted in the Texas Action.

27 Specifically, the documents responsive to the Subpoena, which include documents reflecting the
 28 “royalties and/or other monies currently being held” by Google “in connection with the Musical Works”

1 and “in connection with the Sound Recordings,” are in Google’s sole possession, custody, and control
2 and are directly relevant to all parties’ respective accounting claims in the Texas Action.

3 The Subpoena was properly issued and served upon Google.¹ Nonetheless, Google has failed and
4 refused to produce any responsive documents. Accordingly, Vástago respectfully requests that the Court
5 enter an order compelling Google to comply with the Subpoena, including by producing all responsive
6 documents to the Subpoena within Google’s possession, custody, or control, and to pay all Vástago’s
7 attorney’s fees incurred in connection with the Subpoena, as required by Rule 37(a)(5)(A).

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court should compel Google to produce all documents responsive
10 to the Subpoena within seven (7) days and to pay Vástago’s reasonable attorney’s fees and costs
11 incurred in bringing this motion.

12 **Certification**

13 The undersigned represents that counsel for the Defendants in the Texas Action have confirmed
14 that Defendants join in and support the relief requested by this Motion to Compel against Google,
15 namely, the enforcement of Vástago’s Subpoena against Google (although Defendants do not join in or
16 concur with Vástago’s characterizations of the parties’ respective allegations, claims, and positions in its
17 moving papers herein).

23 ¹ Contrary to the Google’s Objection, the Subpoena complied with 100-mile limit in
24 Rule 45(c)(2)(A). Specifically, Rule 45(c)(2)(A) is measured by straight line or “as the
25 crow flies”. *H-E-B, LP v. Olympia Tools Int’l, Inc.*, 2021 WL 3171890, at *3 (S.D. Cal.
26 2021) (“the term ‘within 100 miles’ means a straight-line distance”); *Sprow v. Hartford*
27 *Ins. Co.*, 594 F.2d 412, 417–18 (5th Cir. 1979) (100–mile distance under former
28 Fed.R.Civ.P. 4(f) is to be measured “as the crow flies”); *Schwartz v. Marriott Hotel*
Servs., Inc., 186 F.Supp.2d 245, 251 (E.D.N.Y. 2002) (100–mile travel rule of Rule 45 is
measured by straight line).

1 **DATED:** February 26, 2024

Respectfully submitted,

2 **SINGH, SINGH & TRAUBEN, LLP**
3 **MICHAEL A. TRAUBEN**

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5 By: /s/ Michael A. Trauben
Michael A. Trauben

6 *Attorneys for Movant/Plaintiff*
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